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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,266	08/31/2000	Moshe Bril	00/20770	4051
7590	09/09/2004		EXAMINER	
G E Ehrlich (1995) LTD c/o Anthony Castorina Suite 207 2001 Jefferson Davis Highway Arlington, VA 22202			KARMIS, STEFANOS	
		ART UNIT	PAPER NUMBER	
		3624		
DATE MAILED: 09/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/653,266	BRIL, MOSHE
	Examiner Stefano Karmis	Art Unit 3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 20 May 2004.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-19 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-19 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. The following communication is in response to Applicant's amendment filed on 20 May 2004.

***Status of Claims***

2. Claims 11-3, 5-7, 13, 15 and 17-19 have been currently amended. Claims 4, 8-12, 14, and 16 have been left as originally filed. Claim 20 has been cancelled. Therefore claims 1-19 are under prosecution in this application.

***Summary of this Office Action***

3. Applicant's arguments filed on 20 May 2004 have been fully considered and are discussed in the next section below or within the following rejection and are not deemed to be persuasive. Therefore claims 1-19 are rejects based on the prior art cited below and Applicant's request for allowance is respectfully denied.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Godin et al. (hereinafter Godin) U.S. Patent 6,266,652.

Claims 1-3, 7, 8 and 19 are rejected over Aggarwal et al. (hereinafter Aggarwal) U.S. Patent 6,151,589 as discussed in the previous office action mailed on the 24 March 2004. Further: Aggarwal fails to teach the step of defining a bid time function that assign bid price levels to intermediate times between said first time and said second time.

Regarding claim 1, Godin discloses a method of processing bids over a network for an item to be sold, using a time based factor comprising setting a first threshold bid level at which to offer the item at a first time, setting a second threshold bid level at which to offer the item at a second time subsequent to said first time, defining a bid time function that assigns bid price levels to intermediate times between said first time and said second time, receiving one or more bids over a network, upon receipt of a bid, calculating a bid time as a function of first threshold bid level, second threshold bid level, bid, first time and second time and accepting bids received

in the order of said calculated bid time (column 3, lines 26-64 and column 10, line 3-48 and Figure 3).

Claim 2, the first threshold bid price level is higher than said second threshold bid price level and a first bid to be accepted from a plurality of bids to be received is a bid having an earliest calculated bid time (column 10, line 3-48).

Claim 3, the first threshold bid price level is higher than said second threshold bid price level and comprising the step of accepting any bid from a plurality of bids, which has an earliest calculated bid time in the past and then accepting received bids as a respective bid time is reached (column 10, line 3-48).

Claim 4, the calculated bid time is a linear function of the passage of time between said first time and said second time (column 10, line 3-48 and Figure 4).

Claim 5, bit time function is a linear function of the interval between said first threshold bid level and said second threshold bid level (column 10, line 3-48 and Figure 4).

Claim 6, bid time function is linear function of the passage of time between said first time and said second time, and of the interval between said first threshold bid level and said second threshold bid level, such that any bid within said threshold bid levels is mappable onto a calculated bid time (column 10, line 3-48 and Figure 4).

Claim 7, the second bid price level is allowed to vary during bidding as a function of a total quantity of accepted bids (column 6, lines 41-63).

Claim 8, defining a plurality of quantity price threshold levels, and using said levels to contribute to a determination of said final bid price (column 10, line 3-48 and Figure 4).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Godin et al. (hereinafter Godin) U.S. Patent 6,266,652 in view of Pallakoff U.S. Patent 6,269,343

Claims 10-12, Godin teaches a process for auctioning products based on price, time and quantity of items available (column 10, lines 3-48). Godin fails to teach that the price is dependent on the quantity of items being purchased. Pallakoff teaches setting a first threshold price level for a quantity of product and setting at least a second bid price level at which to offer for a second quantity of product (column 3, line 28 thru column 4, line19 and Figure 2). The network receives bids and calculates a cumulative quantity of items bid for and offers said items at an intermediate price bid level corresponding to said cumulative quantity as defined by said function (column 3, line 28 thru column 4, line19 and Figure 2). It would have been obvious to one of ordinary skill in the art that the teachings of Godin could be modified to include the teachings of Pallakoff because both systems teach purchasing over a network with multiple price levels. There is sufficient motivation to combine the teachings because by providing different price levels based on the quantity of products purchased, user loyalty and incentives are passed to consumers in an efficient manner.

Regarding independent claim 13, Godin discloses a method of processing bids over a network for an item to be sold, using a time based factor comprising setting a first threshold bid level at which to offer the item at a first time, setting a second threshold bid level at which to offer the item at a second time subsequent to said first time, defining a bid time function that

assigns bid price levels to intermediate times between said first time and said second time, receiving one or more bids over a network, upon receipt of a bid, calculating a bid time as a function of first threshold bid level, second threshold bid level, bid, first time and second time and accepting bids received in the order of said calculated bid time (column 3, lines 26-64 and column 10, line 3-48 and Figure 3).

Godin fails to teach that the price is dependent on the quantity of items being purchased. Pallakoff teaches setting a first threshold price level for a quantity of product and setting at least a second bid price level at which to offer for a second quantity of product (column 3, line 28 thru column 4, line 19 and Figure 2). The network receives bids and calculates a cumulative quantity of items bid for and offers said items at an intermediate price bid level corresponding to said cumulative quantity as defined by said function (column 3, line 28 thru column 4, line 19 and Figure 2). It would have been obvious to one of ordinary skill in the art that the teachings of Godin could be modified to include the teachings of Pallakoff because both systems teach purchasing over a network with multiple price levels. There is sufficient motivation to combine the teachings because by providing different price levels based on the quantity of products purchased, user loyalty and incentives are passed to consumers in an efficient manner.

10. Claims 9 and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Godin et al. (hereinafter Godin) U.S. Patent 6,266,652 in view of Pallakoff U.S. Patent 6,269,343 in further view of Rackson et al. (hereinafter Rackson) U.S. Patent 6,415,270.

Claims 9 and 14-19, Godin discloses a method of processing bids over a network for an item to be sold, using a time based factor comprising setting a first threshold bid level at which to offer the item at a first time, setting a second threshold bid level at which to offer the item at a second time subsequent to said first time, defining a bid time function that assigns bid price levels to intermediate times between said first time and said second time, receiving one or more bids over a network, upon receipt of a bid, calculating a bid time as a function of first threshold bid level, second threshold bid level, bid, first time and second time and accepting bids received in the order of said calculated bid time (column 3, lines 26-64 and column 10, line 3-48 and Figure 3).

Godin fails to teach using data of existing bids to calculate a probability of acceptance of a new bid at a given price level. Rackson teaches an auction coordination system and method in which existing bid price data is used to determine strategies and probabilities of bid acceptance for a potential bidder (column 24, lines 5-57). Further, the bidder has the option to set a designated strategy, to place the bid. It would be obvious to one of ordinary skill in the art at the time of the Applicant's invention that the teachings of Godin could be modified to include the probability of acceptance teachings of Rackson because it provides an efficient manner for a bidder to obtain information to assist in the bidding process. Further, it would be obvious to one of ordinary skill in the art, that the strategies taught by Rackson could include setting a desired acceptance level of 50%, because it is a strategy and condition that the bidder is willing to commit to in order to be successful in the auction.

***Response to Arguments***

11. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (703) 305-8130. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully Submitted  
Stefano Karmis  
30 August 2004



HANI M. KAZIMI  
PRIMARY EXAMINER